

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-208

April 13, 1999

PUBLIC UTILITIES COMMISSION
Proposed Amendments to Chapter 520
Unscheduled Tour, Charter and Water
Taxi Services in Casco Bay,

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

In this Notice of Rulemaking, we propose several amendments to Chapter 520. The purpose of the proposed revisions is to provide more flexibility for providers of charter and water taxi services while maintaining the distinctions between these services and ferry service to the Casco Bay Islands. The proposed revisions also make minor changes to the organization of the rule.

II. BACKGROUND

In our final order in *Old Port Mariner Fleet, Inc., Complaint Regarding Casco Bay Island Transit District's Tour and Charter Service*, Docket No. 98-161 (December 11, 1998), we found that the requirement in Chapter 520 that a charter provider stay with its passengers that disembark on one of the Casco Bay Islands¹ served by the Casco Bay Island Transit District (CBITD or District) creates an unfair advantage because the CBITD drops its charter service passengers off on the Regulated Islands and allows them to return on the District's scheduled ferry service. We stated in that Order that we would open a rulemaking to address this provision of Section 520. We committed to completing the final rule prior to the 1999 tour and charter season.

We also take this opportunity to determine whether Chapter 520's other restrictions on tour, charter and water taxi services are appropriate. The purpose of Chapter 520 is to ensure that regulated ferry service, such as that provided by the CBITD, remains distinct from such competitively offered services such as tour, charter, and water taxi service. Our purpose is not to regulate the rates of competitively offered services.² We question, therefore, the current rule's imposition of price floors on competitively offered services. As discussed below, we propose allowing more flexibility in the prices charter and water taxi operators may charge.

¹The rule refers to these islands as the "Regulated Islands." Hereinafter, this order will use that term to designate the islands served by the CBITD.

²Section 5101-E of Title 35-A requires the Commission to adopt rules "governing unscheduled tours, charters and water taxi services." This provision does not indicate that the Commission is required to regulate the rates of such entities.

III. PROPOSED REVISIONS

A. Section 1: Definitions

The proposed revisions change the definitions of charter and water taxi service by limiting these definitions to descriptions of the services and removing from the definitions restrictions and price limitations on the services. The proposed amended rule contains separate sections to address restrictions on the provision of charter and water taxi services.

The proposed amended rule continues to describe water taxi service as an on-demand, unscheduled, one-way passenger service. However, we question whether water taxi providers should be limited to providing only one-way service. Specifically, we question whether the "one-way" requirement is necessary to distinguish water taxi service from ferry service or charter service. We invite comment on this question.

In addition, the proposed revisions eliminate the definition of minimum tariff. Any remaining limits on pricing are now in Section 5 of the proposed amended rule. We discuss these changes more fully below.

Finally, the proposed amended rule adds a definition for passenger service. This definition includes the hand luggage of passengers in the definition of passenger service. The definitions of charter service and water taxi service in the proposed amended rule thus contain references to passenger service and eliminate specific references to hand luggage.

B. Section 4: Limitations on the Provision of Charter Service

Section 4(A) contains the provision formerly in the definition of charter service prohibiting charter service providers from selling individual tickets for any charter trip. This provision is important for maintaining the distinction between ferry service for which individual tickets are sold and unregulated charter service. The original rule also provides that "no individual person shall be solicited. . . for any charter trip." We propose eliminating this provision because we believe that the prohibition on selling individual tickets adequately addresses the concern that charter providers are not carrying out the same function as ferry service providers. We have added the term "or fares," however, to the provision prohibiting the selling of individual tickets so that it is clear that charter service providers may not offer a fare-per-person service even if they do not actually sell tickets.

Section 4(B) expands the options open to a charter provider whose passengers disembark on one of the Casco Bay Islands served by the CBITD. Under the proposed amended rule, a charter vessel is not required to remain with its passengers that disembark on a Regulated Island if the vessel either returns to pick up

its passengers or if the provider has arranged with the CBITD or another charter provider to provide return service for its passengers.

The only reason for the original rule's requirement that the charter vessel remain with its passengers was a concern about encouraging "free riders" on the CBITD ferry return service. This could occur if charter service providers dropped their passengers off on the Regulated Islands and encouraged them to return on the CBITD ferry. Because CBITD does not collect fares or tickets on the return trip, its operators have no way of knowing whether a passenger is a CBITD passenger or a passenger from a charter provider or water taxi service. However, we found in the Old Port Mariner case that the CBITD charter service vessel does not remain with its own charter passengers; instead, CBITD charter passengers are allowed to return on the CBITD ferry. Through this practice the CBITD has the opportunity to maximize the utilization of its charter boats by dropping passengers off and using the same boat for additional charters. Thus, the CBITD charter boats have an advantage over other charter providers which are required under this rule to stay with their passengers.³

We are concerned about the fairness of a provision that restricts a competitive service in order to accommodate the business practices of a regulated entity. We find it even harder to justify the restriction when the charter service provided by that regulated entity -- the CBITD -- does not comply with the rule's "stay with the passengers" requirement. Thus, in the proposed amended rule, we provide charter providers two alternatives to remaining with the vessel. A charter provider may either return to pick up its charter service passengers or contract with the CBITD or another charter provider to provide passenger return service. We expect that the CBITD will not unreasonably refuse to enter into a contract for provision of return service to a charter provider's passengers. We ask for comment about whether the CBITD should be required by rule -- either chapter 520 or chapter 521 -- to enter into a contract to provide return service to charter service passengers on reasonable terms.

We are aware that, under the CBITD's current fare collection practice, compliance with the proposed amended rule may be difficult to monitor. However, CBITD may choose to modify its current practices to reduce the possibilities of "free riders." For example, the District might sell a double ticket at its Portland ticket office. It could then have a crew member collect the return ticket as passengers embark for return service. Charter providers can purchase return tickets from CBITD on a monthly or seasonal basis based on estimates of ridership. We do not see great additional expense in having a crew member simply take tickets as passengers board the boat. In any event, it would be up to the CBITD to decide whether it needs to implement this change in practice. We invite comment on this proposal and welcome suggested alternatives to the proposed revision.

C. Section 5: Limitations of the Provision of Water Taxi Service

³Although CBITD charter service should be subject to requirements applicable to charter providers, we did not specifically find in the Old Port Mariners case that the CBITD acted in violation of Chapter 520.

This section replaces the requirement of a minimum tariff with the requirement of a flat rate based on the origination and termination points regardless of whether there are fewer than six passengers. We discuss the elimination of the minimum tariff for charter and water taxi service below.

D. Elimination of Minimum Tariff for Charter and Water Taxi Service Providers

The proposed amendment eliminates a minimum tariff for charter providers and replaces the minimum tariff requirement for taxi service with the requirement to charge a flat rate regardless of whether the water taxi carries the maximum number of passengers. We propose eliminating the minimum tariff because we believe such rate regulation of competitive charter and water taxi service is unnecessary.

When we originally adopted Chapter 520 in 1993, we were concerned that without minimum charges, charter providers and water taxis might compete with the service offered by the CBITD. *Public Utilities Commission Re: Unscheduled Tour Charter and Water Taxi Services*, Docket No. 92-264, Order Adopting Rule and Statement of Factual and Policy Basis (January 28, 1993). However, we conclude that the definitions of charter service and water taxi service are sufficiently distinct from the ferry service offered by the CBITD to address such concerns. Moreover, the tariffs filed by charter providers indicate that such providers price their service very differently than CBITD's ferry service. For example, rate schedules filed by charter providers indicate that the average charge for charter service is approximately \$150 per hour.⁴ This pricing indicates to us that it is unlikely that charter providers could efficiently charge rates comparable to the per-passenger fares offered by the CBITD's ferry service.

For water taxis, we have replaced the minimum tariff requirement with the requirement that water taxi service be provided at a flat rate based on the origination and termination points, regardless of whether the vessel carries fewer than six passengers, the maximum number allowed under the rule. Our proposal is based on our assumption that with the flat rate requirement a water taxi would not offer a rate that is below its cost of carrying six passengers to the specific destination on the Regulated Islands and that this cost would not be at or below the CBITD's charges for ferry service to the same destination. We ask for comment on whether these assumptions are correct. Specifically, we would appreciate information on the costs of providing water taxi service and how these costs are calculated. In addition, the flat rate requirement should ensure that water taxi operators will not charge individual fares at or below the rates of the CBITD. To price at or below the rates of the CBITD, the taxi service operator's flat rate for one-way service would have to be comparable to half of the CBITD's fare for round-trip ferry service for an individual going to the same destination

⁴Cf. CBITD's round trip fare of \$8.60 for one adult to Cliff Island (the highest of the adult fares to the Regulated Islands).

as the water taxi. Because the proposed rule would require that a water taxi operator charge the same fare whether there are one or six passengers, a water taxi operator would have to serve two to six passengers at a rate equal to half the CBITD's per-person round-trip fare for the same destination in order to provide a per-person rate comparable to or below the CBITD's rate. Even if the water taxi operator's costs are low enough to allow it to price in this manner, we question whether such pricing would be in the water taxi operator's best interest.

In our original rulemaking, we found that the minimum charge also would provide an efficient means of resolving any disputes regarding compliance with the rule.⁵ We stated that there would be a presumption that by-pass of ferry service had not occurred if a charter or water taxi operator charged the minimum tariff. The reason for the presumption was that there would be no financial incentive for such by-pass as long as the operator could not charge rates below that of the District's ferry service. We question whether incentive for by-pass would exist under the proposed amendments to the rule and welcome comments on this question and, in general, on our proposal to eliminate price floors for charter and water taxi services.

V. RULEMAKING PROCEDURES

This Rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on May 10, 1999 at 1:30 p.m at the Public Utilities Commission. Written comments on the proposed Rule may be filed with the Administrative Director until May 21, 1999. However, the Commission requests that comments be filed by May 3, 1999 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 99-208; and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Public Utilities Commission if special accommodations are needed in order to make the hearing, if one is held, accessible to you by calling 1-287-1396 or TTy 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed Rule.

The Administrative Director shall send copies of this Order and the attached Rule to:

⁵In this rulemaking, we originally proposed the minimum tariff as a possible alternative to the proposed rule which did not contain a price floor.

1. Providers of waterborne transportation services to the Regulated Islands which currently have tariffs on file at the Commission for the provision of such services;
2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
3. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
4. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Accordingly, it is

ORDERED

1. That the Administrative Director send copies of this Notice of Rulemaking and attached proposed Rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed Rule; and
2. That the Administrative Director send a copy of this Notice of Rulemaking and attached proposed Rule to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine, this 13th day of April, 1999.

BY ORDER OF THE COMMISSION

Raymond Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond